

IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

REC'D TN
REGULATORY AUTH.
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OFFICE OF THE
EXECUTIVE SECRETARY

IN RE:)
UNITED CITIES GAS FRANCHISE(S))

DOCKET NO. 00-00562

PETITION FOR INFORMATION, OR ALTERNATIVELY TO INTERVENE

Comes Tennessee consumers, represented by the Consumer Advocate Division of the Attorney General & Reporter to petition the Tennessee Regulatory Authority for information not in the possession of the Consumer Advocate Division regarding United Cities Gas Company (UCG) application to approve franchise agreements and fees in Kingsport, Bristol, Morristown, Tennessee. Alternatively, Tennessee consumers Petition the Authority to Intervene in the proceeding(s) to approve the above referenced UCG franchise agreements and fees. For cause Tennessee consumers would show:

1. Tennessee consumers are represented by the Consumer Advocate Division of the Office of the Attorney General in accordance with Tenn. Code Ann. § 65-4-118.
2. That when the Consumer Advocate Division concludes that it is without sufficient information to initiate a proceeding on behalf of Tennessee consumers it is authorized by Tenn. Code Ann. § 65-4-118 (c)(2)(B) to petition the Authority, after notice to the utility, to obtain information from the utility.
3. That the Consumer Advocate Division has concluded that it is without sufficient information to regarding the actual cost United Cities Gas proportionately causes the cities of Kingsport, Bristol, Morristown, Tennessee to incur because of United Cities

Gas's use of city rights of ways and facilities, or to bring an action solely regarding UCG's imprudence in accepting a franchise agreement based on something other than the actual cost it causes the cities to incur.

4. That without more information, however, the Ordinances supporting UCG's franchise filing appear unconstitutional or in excess of statutory authority of the cities and that a contested case is warranted.
5. That the percentages for the franchise fees appear to be excessive and not based upon lawful actual costs and the franchise agreements should be denied and a contested case is warranted.
6. That UCG's acceptance of the franchise agreements without challenge appears imprudent or calculated to increase the cost of some consumers but not others and that a contested case is warranted.
7. That UCG's counsel at last notice was Mr. Mark G. Thessin, United Cities Gas Company, 810 Crescent Centre Dr., Suite 600, Franklin, TN. 37067-6226 and he has been noticed of this filing.
8. That UCG filed a Petition for Approval of Various Franchise Agreements Ordinances on June 30, 2000.
9. That counsel for Tennessee consumers received a copy of said UCG filing on July 7, 2000.
10. That in said filing UCG submitted a Franchise Agreement, with the City of Kingsport effective April 5, 2000 for a term of 20 years.
11. That the Franchise Agreement between UCG and the City of Kingsport is evidenced by

Ordinance 4742 and that a copy of said Ordinance is furnished as Attachment 1 to Tennessee consumers's Petition and is incorporated herein by reference.

12. That the Franchise Agreement between UCG and the City of Kingsport purports in Section XVIII to impose non pro rata billing of UCG customers in contravention of Tenn. Code Ann. § 65-4-105.
13. That the Franchise Agreement between UCG and the City of Kingsport purports in Section XVIII to be based upon gross revenues from the sale of natural gas within the corporate limits of the city in contravention of *City of Chattanooga v. BellSouth Telecommunications, et al.*, Appeal No. 03A01-9902-CV-00056, filed January 26, 2000 (E.S.). (Attachment 2).
14. That in accordance with *City of Chattanooga v. BellSouth Telecommunications, et al.*, Appeal No. 03A01-9902-CV-00056 (attached), filed January 26, 2000 (E.S.), the relationship of the cost of gas sold or a company's receipts bear no relationship to a just rate for the use of a city's rights of way and facilities and a percentage of revenues is not the proper standard. Furthermore, the Franchise Agreement will increase the exaction from Tennessee consumers solely on the basis of increases in the cost of gas.
15. That the Franchise Agreement between UCG and the City of Kingsport is, or appears to be, in excess of statutory authority, unconstitutional, is not proper for the public convenience and does not properly conserve the public interest.
16. That the Franchise Agreement between UCG and the City of Kingsport should be denied based upon the above referenced grounds.
17. Alternatively, Tennessee consumers request the TRA to suspend hearings on the

Franchise Agreement until UCG provides the information sought by the Consumer Advocate Division in Attachment 5 to this Petition and the TRA determines that the fee is based upon reasonable costs.

18. That UCG submitted an amendment to the Franchise Agreement, with the City of Bristol effective November 8, 1999 for a term of 30 years.
19. That the amended Franchise Agreement between UCG and the City of Bristol is evidenced by Ordinance 99-13 and that a copy of said Ordinance is furnished as Attachment 3 to Tennessee consumers's Petition and is incorporated herein by reference.
20. That the Franchise Agreement between UCG and the City of Bristol purports in Section III to be based upon gross revenues from the sale of natural gas within the corporate limits of the city in contravention of *City of Chattanooga v. BellSouth Telecommunications, et al.*, Appeal No. 03A01-9902-CV-00056 (attached), filed January 26, 2000 (E.S.).
21. That in accordance with *City of Chattanooga v. BellSouth Telecommunications, et al.*, Appeal No. 03A01-9902-CV-00056, filed January 26, 2000 (E.S.), the relationship of the cost of gas sold or a company's receipts bear no relationship to a just rate for the use of a city's rights of way and facilities. Furthermore, the Franchise Agreement will increase the exaction from Tennessee consumers solely on the basis of increases in the cost of gas.
22. That the Franchise Agreement between UCG and the City of Bristol is, or appears to be, in excess of statutory authority, unconstitutional, is not proper for the public convenience and does not properly conserve the public interest.
23. That the Franchise Agreement between UCG and the City of Bristol should be denied

based upon the above referenced grounds.

24. Alternatively, Tennessee consumers request the TRA to suspend hearings on the amended Franchise Agreement between UCG and the City of Bristol until UCG provides the information sought by the Consumer Advocate Division in Attachment 5 to this Petition.
25. That UCG submitted an amendment to the Franchise Agreement, with the City of Morristown effective January 4, 2000 for a term of 15 years.
26. That the amended Franchise Agreement between UCG and the City of Morristown is evidenced by Ordinance 3022 and that a copy of said Ordinance is furnished as Attachment 4 to Tennessee consumers's Petition and is incorporated herein by reference.
27. That the Franchise Agreement between UCG and the City of Morristown purports in Section IX to be based upon gross revenues from the sale of natural gas within the corporate limits of the city in contravention of *City of Chattanooga v. BellSouth Telecommunications, et al.*, Appeal No. 03A01-9902-CV-00056, filed January 26, 2000 (E.S.).
28. That in accordance with *City of Chattanooga v. BellSouth Telecommunications, et al.*, Appeal No. 03A01-9902-CV-00056, filed January 26, 2000 (E.S.), the relationship of the cost of gas sold or a company's receipts bear no relationship to a just rate for the use of a city's rights of way and facilities. Furthermore, the Franchise Agreement will increase the exaction from Tennessee consumers solely on the basis of increases in the cost of gas.
29. That the Franchise Agreement between UCG and the City of Morristown is, or appears to be, in excess of statutory authority, unconstitutional, is not proper for the public convenience and does not properly conserve the public interest.

30. That the Franchise Agreement between UCG and the City of Morristown should be denied based upon the above referenced grounds.
31. Alternatively, Tennessee consumers request the TRA to suspend hearings on the amended Franchise Agreement between UCG and the City of Morristown until UCG provides the information sought by the Consumer Advocate Division in Attachment 6 to this Petition.
32. The Consumer Advocate Division seeks all information regarding the costs UCG proportionately causes the cities of Kingsport, Bristol, Morristown, Tennessee to incur for use of governmental right of way and facilities.
33. That UCG intends or may intend to pass the unlawful franchise fees on to Tennessee consumers who are served by the company.
34. That it appears that UCG has agreed to on or more franchise fees based upon its value as a business asset.
35. That the TRA should require UCG to reconsider its filing in light of *City of Chattanooga v. BellSouth*.
36. That Tenn. Code Ann. § 65-4-105 provides in pertinent part:

(e) *Any franchise payment or other payment for the use of public streets, alleys or other public places or any license, privilege, occupation or excise tax payment, which after February 24, 1961, may be made by a utility to a municipality or other political subdivision, except such taxes as are presently provided for under existing statutes and except such franchise payment or other payments as are presently exacted from the utility pursuant to the terms of any existing franchise or other agreement, shall, insofar as practicable, be billed pro rata to the utility customers receiving local service within the municipality or political subdivision receiving such payments, and shall not otherwise be considered by the authority in fixing the rates and charges of the utility.*
36. That Tenn. Code Ann. §§ 65-4-106 and 65-4-107 further provide:

65-4-106. Construction of chapter.

This chapter shall not be construed as being in derogation of the common law, but shall be given a liberal construction, and any doubt as to the existence or extent of a power conferred on the authority by this chapter or chapters 1, 3 and 5 of this title shall be resolved in favor of the existence of the power, to the end that the authority may effectively govern and control the public utilities placed under its jurisdiction by this chapter.

65-4-107. Approval of privilege or franchise.

No privilege or franchise hereafter granted to any public utility by the state of Tennessee or by any political subdivision thereof shall be valid until approved by the authority, such approval to be given when, after hearing, the authority determines that such privilege or franchise is necessary *and proper* for the public convenience *and properly conserves the public interest*, and the authority shall have power, if it so approves, to impose such conditions as to construction, equipment, maintenance, service or operation as the public convenience and interest may reasonably require; provided, that nothing contained in this chapter shall be construed as applying to the laying of sidings, sidetracks, or switchouts, by any public utility, and it shall not be necessary for any such public utility to obtain a certificate of convenience from the authority for such purpose.

37. That the TRA has power through Tenn. Code Ann. §§ 65-4-105 through 65-4-107 to deny unlawful franchise agreements and UCG and the cities agree that the Tennessee Regulatory Authority has such authority.
38. That Tennessee consumers, upon receipt of sufficient information, may seek to further contest the franchise agreement or otherwise intervene in Docket No. 00-00532 on the grounds that the Franchise Agreements are, or appear to be, in excess of statutory authority, unconstitutional, not proper for the public convenience and do not properly conserve the public interest.
39. Alternatively, Tennessee consumers may file a contested case to prevent the pass through of any franchise fees in excess of the reasonable cost actually incurred by the above-referenced governmental entities for United Cities Gas's use of their land and facilities.

40. That the adverse consequences to Tennessee consumers of basing the franchise fee on company revenues are multiplied by the fact that the cost of gas has increased from approximately \$2.00 per mcf a year ago to approximately \$4.00 per mcf today and the mere increase in the cost of gas causes the total amount of the fees to escalate. As a result the fee will increase, not because of UCG's use of land and facilities but because the commodity cost of gas increases.
41. That UCG should be ordered to disclose whether it has collected any monies in accordance with said franchise agreements and further should be liable to Tennessee consumers for the return of any money collected.

Wherefore, Tennessee consumers pray that the Tennessee Regulatory Authority grant the Division's Petition for Information, or alternatively grant Tennessee consumers's intervention in the above referenced case and suspend hearings on the franchise agreements until sufficient information is provided. Tennessee consumers further pray that if UCG has been collecting any money under the color of the purported franchise fee agreements, it should be ordered to return the money to Tennessee consumers.

Respectfully submitted,

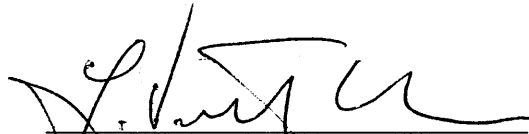


L. Vincent Williams
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011189

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition for Information, or Alternatively Petition for Intervention has been mailed postage prepaid to the party(s) listed below this 15th day of August, 2000.

Mr. Mark Thessin
United Cities Gas Company
810 Crescent Centre Dr., Suite 600
Brentwood, Tennessee 37027



L. Vincent Williams

1. Please provide all information in UCG's or Atmos' possession, or of which UCG or Atmos has knowledge that shows the cost the city governments incur because of UCG's franchised operations.
2. Please provide any study made by, or on behalf of, UCG or Atmos to estimate the cost UCG or Atmos causes any city government to incur in any state.
3. Please provide all information that may show any relationship between a city's costs and any present or proposed franchise fees or UCG revenues. Please include in this information the maximum annual franchise fees that would be paid under each of the proposed agreements based on 1) 1999 calendar year sales and 2) 1999 calendar year sales adjusted to show the effects on the fees if natural gas prices were two times as much as they were in 1999.
4. Please provide the statutory authority for a city to charge UCG a franchise fee based on a percentage of revenues.
5. If UCG supports the proposed franchise fees as being legal, please provide the rationale that differentiates UCG's situation from the appellants in *City of Chattanooga vs. Bellsouth*.
6. Please provide the entire franchise agreement with the City of Bristol Tennessee (Ordinance 95-60) as amended by Ordinance 99-13.
7. Please provide the names of all negotiators involved in each of the proposed franchise agreements.
8. Please provide the amounts (if any) of franchise fees that have been collected under each of the proposed agreements.